

[AS REPORTED FROM THE ELECTORAL LAW COMMITTEE]

House of Representatives, 4 September 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Mr Terris

PROPORTIONAL REPRESENTATION INDICATIVE REFERENDUM

ANALYSIS

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A BILL INTITULED

Struck Out

5 **An Act to provide for the holding, in conjunction with the 1990 general election, of a poll to decide whether members of Parliament should be elected by proportional representation**

No. 22—2

*Price
incl. GST \$2.20*

New

An Act to provide for the holding, before the 31st day of October 1991, of a poll to decide whether members of Parliament should be elected by the mixed member proportional system of representation

5

BE IT ENACTED by the Parliament of New Zealand, as follows:

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1. Short Title and commencement—(1) This Act may be cited as the Proportional Representation Indicative Referendum Act 1990.

10

(2) This Act shall come into force on the 1st day of May 1990.

New

1. Short Title and commencement—(1) This Act may be cited as the Proportional Representation Indicative Referendum Act 1990.

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(2) This Act shall come into force on the date on which it receives the Royal assent.

1A. Expiry—This Act shall expire with the close of the 31st day of March 1992, and on the close of that day shall be deemed to be repealed.

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2. Special poll of electors as to proportional representation—(1) On the day appointed in 1990 for the taking of the poll (in this Act called the electoral poll) of the electors of each electoral district for the return of a member of Parliament for the district, a poll (in this Act called the Indicative poll) of the electors of each such district shall also be taken on the proposal.

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(2) The proposal shall be submitted in the voting paper in form 1 in the Schedule to this Act.

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(3) The Indicative poll shall be taken in every electoral district, notwithstanding that in any such district no electoral poll may be required to be taken.

5 (4) Subject to the provisions of this Act and of any regulations made under this Act, the following provisions shall apply to the Indicative poll:

10 (a) The provisions of the Electoral Act 1956 and of any regulations made under that Act shall, as far as they are applicable and with the necessary modifications, apply as if the Indicative poll were the electoral poll, and the Indicative poll shall be taken in the manner prescribed by that Act for the taking of the electoral poll:

15 (b) The electoral rolls for the time being in force under that Act shall be deemed to be the rolls of electors for the purposes of the poll.

New

20 **2. Special poll of electors as to mixed member proportional system of representation**—(1) On such day in 1991 as shall be fixed by the Governor-General by Order in Council, a poll of the electors of each electoral district (within the meaning of the Electoral Act 1956) shall be taken on the proposal that members of Parliament should be elected by the mixed member proportional system of representation.

25 (2) The proposal shall be submitted in the voting paper in form 1 in the Schedule to this Act.

(3) The poll required by subsection (1) of this section is referred to in this Act as the indicative poll.

30 (4) The day appointed under subsection (1) of this section shall be a day not later than the 31st day of October 1991.

2A. Application of Electoral Act 1956—Subject to the provisions of this Act and of any regulations made under this Act, the provisions of the Electoral Act 1956 and of any regulations made under that Act shall, as far as they are applicable and with the necessary modifications, apply as if the indicative poll were a poll of the electors of each electoral district for the return of a member of Parliament for the

New

district, and the indicative poll shall be taken in the manner prescribed by that Act for the taking of such a poll of the electors of each electoral district.

2B. Electoral rolls—Subject to the provisions of this Act and 5
of any regulations made under this Act, the electoral rolls for
the time being in force under the Electoral Act 1956 shall be
deemed to be the rolls of electors for the purposes of the
indicative poll.

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3. Provisions subject to which indicative poll to be taken—The Indicative poll shall be taken as follows:

- (a) The Returning Officer of the electoral district shall be the Returning Officer and the Deputy Returning Officers appointed by the Returning Officer for the taking of the electoral poll shall be the Deputy Returning Officers for the taking of the Indicative poll: 15
- (b) The Returning Officer shall take the Indicative poll in the manner provided for taking the electoral poll, and shall provide voting papers and all things necessary for taking the Indicative poll. 20
- (c) The poll clerks, interpreters, and ushers appointed for the taking of the electoral poll shall by virtue of being so appointed, be, in addition, poll clerks, interpreters, and ushers for the taking of the Indicative poll: 25
- (d) The polling booths in each electoral district for the taking of the Indicative poll shall be the same as those used at the taking of the electoral poll:
- (e) The voting paper for the Indicative poll shall be issued in the same manner as the ballot paper for the electoral poll, and the voting paper and the ballot paper shall be given simultaneously to the elector. 30
- (f) The elector shall tick one of the proposals on the voting paper; and the vote shall be deemed to be given in favour of the proposal which the elector ticks. 35

New

5 **3. Method of voting**—Every voter at the indicative poll shall vote by marking the voting paper with a tick within the circle immediately after the proposal for which the voter wishes to vote.

4. Appropriation—All expenses incidental to the taking of the Indicative poll shall be paid out of money appropriated by Parliament for the purpose.

10 **5. Nomination of scrutineers by electors in favour of proposal**—Any 10 or more electors who are in favour of the proposal that Parliament be elected by (*proportional representation*) the mixed member proportional system of representation may, by nomination paper under their hands, nominate any 2 specified persons to appoint one scrutineer to act at each polling booth in the district in the interest of all
15 electors who are in favour of the proposal.

6. Nomination of scrutineers by electors not in favour of proposal—Any 10 or more electors who are not in favour of the proposal referred to in **section 5** of this Act may, in like
20 manner, nominate any 2 specified persons to appoint one scrutineer to act at each such polling booth in the interest of all electors who are not in favour of the proposal.

7. Form of nomination paper—The nomination paper shall be in **form 2** in the Schedule to this Act.

25 **8. Nomination paper to be lodged with Returning Officer**—The nomination paper shall be lodged with the Returning Officer of the electoral district not later than the twelfth day before polling day, and shall be open to public inspection.

30 **9. Returning Officer to select fit persons to appoint scrutineers**—On a day to be publicly notified by the Returning Officer of the electoral district, being not earlier than the tenth nor later than the fifth day before polling day, the Returning Officer shall publicly consider all the nomination
35 papers duly lodged, and, after hearing all objections select 2 fit persons to appoint one scrutineer, and 2 fit persons to appoint

the other scrutineer, to act at each polling booth in the respective interests as aforesaid; and the persons so selected may appoint accordingly.

10. Selection to be in writing—The selection shall be by writing under the hand of the Returning Officer, and shall be in form 3 in the Schedule to this Act. 5

11. Appointments of scrutineers to be in writing—The appointment shall in each case be by writing under the hands of the persons selected, and shall be in form 4 in the Schedule to this Act. 10

12. Powers and rights of scrutineers—Every scrutineer so appointed shall, for the purposes of the Indicative poll, have all the powers and rights of a scrutineer under the Electoral Act 1956, and shall make a declaration in form 1 in the Schedule to the Electoral Act 1956 (which form shall be used with all necessary modifications). 15

13. Remuneration of scrutineers not expenses of poll—The remuneration (if any) of the scrutineers shall not be expenses incidental to the taking of the Indicative poll.

14. Application to District Court Judge for recount—If the result of any Indicative poll is disputed on the ground that the public declaration by the Returning Officer in accordance with section 116 (1) of the Electoral Act 1956 (as applied by this Act) was incorrect, the following provisions shall apply: 20

(a) Any 6 electors may, within 3 working days after the public declaration, apply to a District Court Judge for a recount of the votes: 25

(b) Every such application shall be accompanied by a deposit of \$200 (which deposit is inclusive of goods and services tax): 30

(c) The District Court Judge shall cause a recount of the votes to be commenced within 3 working days of receiving the application, and shall give notice in writing to the applicants and to any scrutineers appointed under section 11 of this Act of the time and place at which the recount will be made: 35

(d) Section 117 (4)–(9) and section 118 of the Electoral Act 1956, so far as they are applicable and with the necessary modifications, shall apply to the recount.

5 **15. Declaration of result**—(1) After the Returning Officer has made a public declaration in accordance with section 116 (1) of the Electoral Act 1956 (as applied by this Act) and after the time for an application for a recount has elapsed, the Returning Officer shall send to the Chief Electoral Officer a statement of the number of informal votes, and of the total number of valid votes recorded, and of the number of valid votes recorded for and against the proposal.

10 (2) On receipt of the statements from all Returning Officers, and on or before a day to be fixed by the Governor-General by Order in Council, the Chief Electoral Officer shall ascertain and declare—

- (a) The total number of valid votes recorded for the proposal; and
- 15 (b) The total number of valid votes recorded against the proposal; and
- (c) The result of the poll as determined thereby.

20 (3) The Chief Electoral Officer shall notify in the *Gazette* the numbers of the votes as finally ascertained by the Chief Electoral Officer and the result of the poll as determined thereby.

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25 **16. Election expenses**—For the purposes of section 139 of the Electoral Act 1956, “election expenses”, in relation to a candidate at an election in any district, includes expenses that relate to the promotion by the candidate of any of the proposals on the voting paper for the Indicative poll.

New

30 **16. Publicity for indicative poll**—(1) No person shall publish or cause or permit to be published in any newspaper, periodical, poster, or handbill, or broadcast or cause or permit to be broadcast over any radio or television station, any advertisement used or appearing to be used to promote one of the proposals in the indicative poll unless the advertisement
35 contains a statement setting out the true name of the person for whom or at whose direction it is published and the address of his or her place of residence or business.

New

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 who wilfully contravenes **subsection (1)** of this section.

(3) Nothing in this section shall restrict the publication of any news or comments relating to the indicative poll in a newspaper or other periodical or in a radio or television broadcast made by a broadcaster within the meaning of section 2 of the Broadcasting Act 1989. 5

Cf. 1990, No. 3, s. 16 10

Petitions

17. Sections of Electoral Act 1956 applied—(1) The sections of the Electoral Act 1956 described in **subsection (2)** of this section, as far as they are applicable and with the necessary modifications, shall apply to a petition for an inquiry under **section 18** of this Act. 15

(2) The sections of the Electoral Act 1956 referred to in **subsection (1)** of this section are sections 158 to 160, 161, 162 (1), (2), (4), (5), 166, 167, 168, 173 to 181, 182 (1) (a) and (b), and 183. 20

Cf. 1990, No. 3, s. 18

18. Petition for inquiry—(1) Where any 50 electors in an electoral district are dissatisfied with the result of the indicative poll in their district, they may, within 20 working days after the Returning Officer has made a public declaration in accordance with section 116 (1) of the Electoral Act 1956 (as applied by this Act), file a petition in the High Court for an inquiry as to the conduct of the poll or of any person connected with it. 25

(2) If the petition complains of the conduct of a Returning Officer or Registrar of Electors, the person complained of shall be a respondent to the petition. 30

(3) The petition shall allege the specific grounds on which the complaint is founded, and no other grounds than those stated shall be investigated, except by leave of the Court and upon reasonable notice being given, which leave may be given upon such terms and conditions as the Court considers just: 35

Provided that evidence may be given to prove that any proposal other than that declared to be carried was carried and not rejected, or was rejected and not carried.

New

(4) Such petition shall be in **form 5** in the Schedule to this Act, or to the like effect, and shall be filed in the registry of the High Court nearest to the place where the poll was held. The Registrar of the Court shall forthwith send a copy of the petition to the Returning Officer.

(5) The petition shall be served as nearly as may be in the manner in which a statement of claim is served, or in such other manner as may be prescribed by rules of Court.

10 Cf. 1990, No. 3, s. 19

19. Who may be respondents—Any 6 electors in the electoral district may, at any time not later than 3 working days before the commencement of the inquiry, file in the Court in which the petition is filed a notice in writing of their intention to oppose the petition, and thereupon the electors giving such notice shall be deemed to be respondents to the petition.

Cf. 1990, No. 3, s. 20

20. Determination of Court as to result of indicative poll—At the conclusion of the trial of a petition for an inquiry, the Court shall determine whether, by reason of some irregularity that in its opinion materially affected the result of the poll, the poll is void, or whether any and what proposal was duly carried.

Cf. 1990, No. 3, s. 21

21. Persons committing irregularities to be named in report—(1) On such inquiry the Court shall report in writing to the Minister of Justice the names of all persons found to have been guilty of any irregularity at or in connection with the poll, and shall state in such report whether or not in the opinion of the Court any such irregularity tended to defeat the fairness of the poll, and whether or not such irregularity tended materially to affect the result thereof.

(2) Every person shall be guilty of an irregularity within the meaning of **subsection (1)** of this section who commits any offence described in **section 23** of this Act, whether or not that person is prosecuted for or convicted of any such offence.

Cf. 1990, No. 3, s. 22

New

22. Fresh poll—(1) Where any indicative poll is declared void under **section 20** of this Act, notice thereof shall be given by the Court to the Returning Officer, and a fresh poll shall, on a day to be fixed by the Returning Officer, being not later than 30 working days after the date of such notice, be taken in the manner prescribed by this Act in the case of an indicative poll. 5

(2) At any such fresh indicative poll the same roll of electors shall be used as was used at the voided poll.

Cf. 1990, No. 3, s. 23 10

23. Offences—Every person commits an offence and shall be liable on summary conviction to a fine not exceeding \$2,000 who, at an indicative poll,—

- (a) In any way interferes with any elector, either in the polling booth or while the elector is on the way to the polling booth, with the intention of influencing the elector or advising him or her as to his or her vote; or 15
- (b) Prints or distributes or delivers to any person on the day of the poll, or at any time during the 3 days immediately preceding the poll, anything being or purporting to be in imitation of any voting paper to be used at the poll, together with any direction or indication as to how any person should vote, or in any way containing any such direction or indication; or 20
- (c) During the hours in which the poll is being taken, makes any public demonstration having reference to the poll by means of living figures, effigies, paintings, placards, or other like means; or 25
- (d) Obtains possession of or has in his or her possession any voting paper other than the one given him or her by the Returning Officer for the purpose of recording his or her vote, or retains any voting paper in his or her possession after leaving the polling booth; or 30
- (e) Refuses or neglects to comply with, or commits any breach of any of the provisions of this Act, or misleads or gives any misdirection to a voter in any matter relating to the voter's vote; or 35

New

(f) Does or omits to do an act that if done or omitted to be done at an electoral poll would be an offence under the Electoral Act 1956.

5 Cf. 1990, No. 3, s. 24

24. Regulations—The Governor-General may from time to time, by Order in Council, make all such regulations as may be necessary or expedient for the purposes of giving full effect to the provisions of this Act and for the due administration thereof.

10 Cf. 1990, No. 3, s. 25

SCHEDULE

(Section 2 (2))

Struck Out

Form 1
Voting Paper
Electoral District

POLL ON PROPOSAL FOR PROPORTIONAL REPRESENTATION

1. Vote by putting a tick in the circle immediately after the proposal you choose.
2. After voting, fold this voting paper so that its contents cannot be seen and place it in the ballot box.
3. If you spoil this voting paper, return it to the officer who issued it and apply for a fresh one.
4. You must not take this voting paper out of the polling booth.



Vote Here

I agree that Parliament should be elected by proportional representation.	<input type="radio"/>
I agree that Parliament should be elected in the same way it is now.	<input type="radio"/>

NOTE*

This form shall be joined by perforations to the ballot paper for the electoral poll.

*Not to be printed as part of the form.

SCHEDULE—continued

New

<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <div style="position: absolute; top: 5px; left: 5px;">OFFICIAL MARK</div> <div style="position: absolute; bottom: 5px; left: 5px;">OFFICIAL MARK</div> </div>	<p>Form 1 VOTING PAPER</p> <p>..... [Consecutive Number]</p>	<p>Section 2 (2)</p>
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..... Electoral District

Poll on Proposal for Mixed Member Proportional System of Representation

Directions

(Read carefully before voting)

1. Vote for only one proposal.
2. Vote by putting a tick in the circle immediately after the proposal you choose.
3. After voting, fold this voting paper so that its contents cannot be seen and place it in the ballot box.
4. If you spoil this voting paper, return it to the officer who issued it and apply for another.
5. You must not take this voting paper out of the polling booth.



Vote Here

I FAVOUR THE MIXED MEMBER PROPORTIONAL SYSTEM OF REPRESENTATION FOR ELECTING MEMBERS OF PARLIAMENT.	<input type="radio"/>
I FAVOUR THE PRESENT (FIRST-PAST-THE-POST) SYSTEM FOR ELECTING MEMBERS OF PARLIAMENT.	<input type="radio"/>

NOTE*

This form shall have a counterfoil in form 9 in the First Schedule to the Electoral Act 1956.
*Not to be printed as part of the form.

SCHEDULE—*continued*

Form 2

Section 7

NOMINATION OF SCRUTINEERS FOR PURPOSES OF INDICATIVE POLL

1. For the purposes of the (*term*) indicative poll to be taken in the
 Electoral District on the day of (1990) 1991,
 we, the undersigned electors of the district, hereby nominate [*Full
 names, addresses, and occupations of the 2 persons nominated*] as fit persons to
 appoint one scrutineer to act at each polling booth in the interest of all
 electors who are in favour [*or, as the case may be, not in favour*] of the
 proposal.
2. In support of our nomination we hereby severally, each for himself or
 herself, solemnly and sincerely declare that we are, and we believe each
 of the persons nominated to be, honestly in favour [*or, as the case may be,
 not in favour*] of the proposal.

We severally make this solemn declaration conscientiously believing the
 same to be true, and by virtue of the Oaths and Declarations Act 1957.

Signature, Address, and
 Occupation

Severally declared by each of the
 [*Number*] declarants whose signa-
 tures are subscribed hereto, this
 day of
 (1990) 1991, before me—

 J.P. [Solicitor,
or as the case may be].

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

NOTE—Not less than 10 electors must sign.

SCHEDULE—continued

Form 3

Section 10

RETURNING OFFICER'S SELECTION FOR THE PURPOSES OF THE INDICATIVE POLL

Having considered the nominations duly lodged in this behalf, and having heard all objections thereto, I hereby select [Full names, addresses, and occupations of the 2 persons elected, etc. (as above)] as fit persons to appoint one scrutineer to act at each polling booth at the (term) indicative poll for the ... Electoral District on the day of (1990) 1991, in the interest of all electors who are in favour [or, as the case may be, not in favour] of the proposal.

Dated at this day of (1990) 1991.

....., Returning Officer.

Form 4

Section 11

APPOINTMENT OF SCRUTINEERS FOR THE PURPOSES OF THE INDICATIVE POLL

To the Returning Officer.

For the purposes of the (term) indicative poll for the Electoral District to be taken on the day of (1990) 1991, we, the undersigned, being duly authorised in this behalf, hereby appoint the persons named in the Schedule hereto to act as scrutineers at the polling booths named in the Schedule, in the interest of all electors who are in favour [or, as the case may be, not in favour] of the proposal.

SCHEDULE

Scrutineer [Full name, address, and occupation of the scrutineer]	Polling Booth [Name of polling booth]
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Dated atthis day of (1990) 1991.

.....
[Signatures of the 2 persons
authorised to appoint].

SCHEDULE—*continued*

New

Form 5

Section 18 (4)

PETITION FOR INQUIRY AS TO RESULT OF INDICATIVE POLL

In the matter of an indicative poll held in the Electoral District
on the day of 1991,

The petition of the undersigned electors of the Electoral
District, namely, A.B. of, C.D., of, etc.

New

1. Your petitioners state that the indicative poll was held on the
day of 1991, and that the Returning Officer has given public
notice that the proposal that the members of Parliament should be
elected by the mixed member proportional system of representation
was carried [*or was not carried*] in the district.

2. And your petitioners say that [*State the facts and grounds on which the
petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said
proposal was rejected and not carried in the district [*or was carried and not
rejected in the district*] [*or that the poll was void*].

A.B.,
C.D.,
etc.